

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

UNITED STATES OF AMERICA,)
vs.)
JEFFREY ALEXANDER STERLING,)
Defendant.)
Case No. 1:10-cr-00485-LMB

**DEFENDANT'S REPLY TO THE GOVERNMENT'S OPPOSITION TO THE
DEFENDANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER
DENYING THE MOTION TO DISMISS THE INDICTMENT BASED ON
SELECTIVE PROSECUTION, OR, IN THE ALTERNATIVE,
FOR DISCOVERY RELATED TO SELECTIVE PROSECUTION**

COMES NOW Jeffrey A. Sterling, by counsel, and for his Reply to the Government's Opposition to the Defendant's Motion for Reconsideration of the Court's Order Denying the Motion to Dismiss the Indictment Based on Selective Prosecution, or, in the alternative, for Discovery Related to Selective Prosecution, states as follows:

The Government’s Opposition (Docket No. 445) gives short shrift to all of the defendant’s arguments, focusing mainly upon the claim that the defendant has failed to identify anyone “similarly situated” to him. That focus, the government says, must be on “individuals who communicated national defense information related to a closely held, extremely sensitive counter-proliferation operation to individuals not entitled to receive it, with reason to believe that doing so had the potential to do damage to the United States or to benefit foreign countries.” Opp. at 5. Assuming, *arguendo*, that the Government has cited the correct standard, attached hereto is a March 10, 2015 Washington Post newspaper article titled “Leak Investigation Stalls Amid Fears

of Confirming U.S-Israeli Operation" (Ex. 1). That story provides in depth details – obviously emanating from the U.S. Government – as to why the prosecution of Retired General James Cartwright for leaking classified information has allegedly stalled. The charges faced by General Cartwright could not be more similar to what Mr. Sterling faced. The article explains that “[f]ederal investigators suspect that retired Marine Gen. James E. 'Hoss' Cartwright leaked to a New York Times reporter details about a highly classified operation to hobble Iran's nuclear enrichment capability through cyber-sabotage – an effort not acknowledged by Israel or the United States.” Ex. 1. at 1. The article goes on to report that “[d]etails of the joint program, including its code name, Olympic Games, were revealed by Times reporter David E. Sanger in a book and article in June 2012. The sabotage of Iranian nuclear centrifuges by the computer worm dubbed Stuxnet had emerged two years earlier and security experts speculated that it was the work of the United States and Israel.” *Id.* at 3.

Here, ironically, the Government has leaked to the press the details of problems it allegedly faces in bringing a leak case involving the Iranian nuclear weapons program. The point for Mr. Sterling is that General Cartwright's case presents evidence of a leak involving the sabotage of the Iranian nuclear weapons program, in which code names are disclosed as well as the alleged cooperation of a foreign government, and no prosecution is initiated. The only difference between the two cases – aside from the minor detail that the Stuxnet story was published by a different New York Times writer than Mr. Risen – is that General Cartwright is a white high-ranking official and Jeffrey Sterling is an African-American man who became an outcast at the CIA following his publically-filed employment discrimination claim. This showing plainly supports the need for the requested discovery and should give this Court pause as this case proceeds.

In addition, there is the recent case of General David Petraeus, the former Director of the C.I.A. The Plea Agreement and Factual Basis for the Plea in General Petraeus's case are attached hereto as Exhibits 2 and 3. In these documents, General Petraeus admits that he provided classified information to a person – his mistress – who was not entitled to receive it. That information included “national defense information, including Top Secret//SCI and code word information.” Ex. 2 ¶ 18. General Petraeus also admits that he provided to his mistress “classified information regarding the identities of covert officers, war strategy, intelligence capabilities and mechanisms, diplomatic discussions, quotes and deliberate discussions from high level National Security Council meetings, and defendant DAVID HOWELL PETRAEUS’s discussions with the President of the United States of America.” *Id.* ¶ 17.

For these transgressions, General Petraeus pled guilty to a misdemeanor violation of 18 U.S.C. § 1924 and will not serve a single day in jail. No espionage charge was made. Equally stunning is that General Petraeus admits to making false statements to the Government about his criminal activity and yet avoids a perjury or obstruction charge. *Id.* ¶¶ 32-33.

On the other hand, Mr. Sterling was charged with espionage and obstruction and faces a prison term. The defense submits again that the principal difference between Mr. Sterling and Generals Petraeus and Cartwright are their respective races and rank. Like General Cartwright, General Petraeus is a white, high-ranking official. Some discovery must be conducted to vindicate Mr. Sterling’s right to be free from selective prosecution. The Government must explain why the justice meted out to white Generals is so different from what Mr. Sterling has faced.

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By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record.

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